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RESOURCE CONSERVATION AND RECOVERY ACT **PROGRAMS REVIEW**

I. EXECUTIVE SUMMARY

U.S. EPA Region 5 received a petition which, as amended and supplemented, expressed concerns with environmental programs administered by the Ohio EPA and asked the U.S. EPA to withdraw approval or authorization of two Resource Conservation and Recovery Act (RCRA) programs based on allegations concerning Ohio EPA's administration of these programs. This RCRA review report addresses allegations that criticized Ohio EPA's implementation of the RCRA Subtitle C (hazardous waste) and Subtitle D (solid waste) programs. The petitioners requested withdrawal of Ohio's authorized Subtitle C hazardous waste program pursuant to 42 U.S.C. § 3006(e) and withdrawal of its approved Subtitle D program pursuant to 42 U.S.C. § 6947. U.S. EPA reviewed Ohio EPA's implementation of these RCRA programs for the period 1995 to 2000.

A. SUBTITLE C

In its Draft Report,¹ U.S. EPA made preliminary determinations that, overall, Ohio EPA has not failed to (1) act on violations of permits or other program requirements; (2) seek adequate enforcement penalties or to collect administrative fines when imposed; (3) inspect and monitor activities subject to regulation; (4) exercise control over activities required to be regulated under RCRA, including issuance of permits; or (5) comply with the terms of its Memorandum of Agreement (MOA). U.S. EPA did not find evidence to substantiate the petition's allegation that Ohio EPA had abandoned enforcement efforts by allowing facilities to enter the State's statutory voluntary action program (VAP). U.S. EPA did not find sufficient evidence to warrant initiation of withdrawal proceedings. This conclusion was based on U.S. EPA's annual reviews of Ohio's hazardous waste permitting and enforcement programs from 1995 to 2000 as well as information provided by the petitioners. U.S. EPA did not find evidence in the comments relating to the period of review that would lead to a finding other than that reached in the Draft Report. Therefore, U.S. EPA does not recommend the initiation of withdrawal proceedings for Ohio EPA's RCRA Subtitle C hazardous waste program. Information on specific responses to comments is in the Responsiveness Summary.

B. SUBTITLE D

Although commenters reiterated concerns and submitted new information, U.S. EPA continues to conclude that there is insufficient substantive information to indicate that Ohio's Municipal

¹U.S. EPA refers to the report, dated August 30, 2001, and made public on September 4, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" as the Draft Report.

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Solid Waste Landfill (MSWLF) program does not meet the minimum federal requirements under Section 4005(c)(1)(C) of RCRA, 42 U.S.C. § 6945(c)(1)(C). The findings in the Draft Report did not change based on the new information submitted during the public meeting and comment period. Information on specific responses to issues raised in the petition and public comment period is found in the Responsiveness Summary.

II. ALLEGATIONS

A. SUBTITLE C

The petitioners claim that Ohio EPA avoids enforcing its environmental laws and fails to inspect and monitor activities subject to regulation. Furthermore, the petitioners claim that Ohio EPA abandoned its existing enforcement efforts in favor of the Ohio's Voluntary Action Program (VAP). The January 27, 2000 supplement to the petition included a table that listed the following installations as examples where Ohio EPA failed to carry out certain aspects of the RCRA hazardous waste program: Georgia-Pacific Resin in Columbus; the Tremont Sanitary Landfill in Springfield; the Bond Road Landfill in Whitewater Township; the River Valley High School in Marion; AK Steel in Middletown; WTI in East Liverpool; Envirosafe in Oregon; Brush Wellman in Elmore; PPG Industries in Circleville; Elano Corporation in Beavercreek; and Worthington Custom Plastic in Warren County.

The petitioners claim that Ohio EPA fails to exercise control over authorized hazardous waste program activities, including failure to issue timely permits and the issuance of permits that do not conform to the requirements of RCRA. The petitioners also claim that Ohio EPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. This includes issuing improper permit variances and exemptions and allowing facilities to participate in the VAP as a substitute for permitted corrective action activities.

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The petitioners claim that Ohio's solid waste program fails to ensure that waste is disposed of in an environmentally sound manner and in compliance with 42 U.S.C. § 6944(a). The petitioners also claim that Ohio fails to close or upgrade existing open dumps in accordance with 42 U.S.C. § 6945. Furthermore, the petitioners claim that Ohio EPA does not adequately control air emissions, surface water discharges and groundwater contamination from MSWLFs. Five MSWLFs were listed as examples of alleged failures of the program: Clarkco Sanitary Landfill, Tremont Sanitary Landfill, ELDA Recycling & Disposal Facility, Bond Road Landfill and Rumpke Sanitary Landfill.

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III. WITHDRAWAL CRITERIA

A. SUBTITLE C

The criteria for withdrawal of a state's hazardous waste program are in 40 C.F.R. § 271.22(a), which provides that the Administrator may withdraw program approval when the state no longer complies with specific requirements set forth in the regulations and fails to take corrective action. Such circumstances include the following:

- (1) When the state's legal authority no longer meets the requirements of this part, including:
 - (i) Failure of the state to promulgate or enact new authorities when necessary; or
 - (ii) Action by a state legislature or court striking down or limiting state authorities;
- (2) When the operation of the state program fails to comply with the requirements of this part, including:
 - (i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;
 - (ii) Repeated issuance of permits which do not conform to the requirements of this part; or
 - (iii) Failure to comply with the public participation requirements of this part;
- (3) When the state's enforcement program fails to comply with the requirements of this part, including:
 - (i) Failure to act on violations of permits or other program requirements;
 - (ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or
 - (iii) Failure to inspect and monitor activities subject to regulation; and
- (4) When the state program fails to comply with the terms of the MOA required under 40 C.F.R. § 271.8.

See 40 C.F.R. § 271.22(a).

B. SUBTITLE D

The criteria and procedures for withdrawal of U.S. EPA's determination of adequacy related to a state MSWLF permit program are in 40 C.F.R. § 239.13. This part states that the Regional Administrator may initiate withdrawal of a determination of adequacy when there is reason to believe that: (1) a state no longer has an adequate permit program; or (2) the state no longer has adequate authority to administer and enforce an approved program in accordance with 40 C.F.R. Part 239. Since Ohio EPA has authority to administer and enforce its MSWLF program (see 59 Fed. Reg. 30353-30356, June 13, 1994), the focus of U.S. EPA's evaluation was on whether

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Ohio's MSWLF permit program was still adequate based on a review of the claims set forth in the petition as well as information gathered during the evaluation of those claims.

The criteria that U.S. EPA used in 1994 to determine that Ohio's MSWLF program was adequate under Subtitle D of RCRA included: (1) a state must have enforceable standards for new and existing MSWLFs that are technically comparable to U.S. EPA's revised criteria; (2) a state must have authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction; (3) a state must provide for public participation in permit issuance and enforcement; and (4) a state must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

IV. PRELIMINARY FINDINGS

A. SUBTITLE C

Based on its evaluation of the claims set forth in the petition and a review of the annual audits of Ohio's hazardous waste enforcement program from 1995 through 2000, U.S. EPA made a preliminary finding that the evidence did not substantiate petitioners' allegations that Ohio EPA avoids enforcing its environmental laws or fails to inspect and monitor activities subject to regulation, or constitute sufficient cause under 40 C.F.R. § 271.22(a)(3) to warrant commencing formal withdrawal proceedings. U.S. EPA did not find sufficient evidence to substantiate the petitioners' allegation that Ohio EPA fails to exercise control over authorized hazardous waste program activities, or to merit commencing formal withdrawal proceedings. In general, U.S. EPA found that the Ohio RCRA permits were properly issued, sufficiently detailed, and consistent with the language used in federal RCRA permits. Our file review did not substantiate the allegations that Ohio EPA failed to exercise control, issued permits which do not conform to the requirements of RCRA, or failed to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements. U.S. EPA did not find sufficient evidence to substantiate the petitioners' allegation that Ohio EPA fails to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements or warrant commencing withdrawal proceedings. Nor did it find sufficient evidence to substantiate the petition's claim that Ohio EPA had abandoned its enforcement efforts by allowing facilities to enter the State's statutory VAP.

B. SUBTITLE D

Although the petition requests that U.S. EPA withdraw its approval of Ohio's Solid Waste Management Plan, the claims in the petition were in reality a request to withdraw Ohio's MSWLF permit program, which in effect requires compliance with 42 U.S.C. §§ 6944(a) and 6945. Ohio's Solid Waste Management Plan was approved by U.S. EPA on November 14, 1985

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(50 Fed. Reg. 47049, November 14, 1985). The purpose of Ohio's Solid Waste Management Plan, as approved, was to identify state, local, and regional responsibilities for solid waste management, encourage resource conservation and recovery, and develop and apply state controls to provide for environmentally sound solid waste disposal practices. Ohio EPA updated the plan in 1995 and again in 2001. U.S. EPA approved the most recent update after issuing a draft and soliciting public comment in writing and via five public hearings.

The purpose of Ohio's MSWLF permit program is to ensure that municipal solid waste landfills comply with the revised federal criteria (also referred to as "Subtitle D" criteria) set forth in 40 C.F.R. Part 258. A review of the petition clearly showed that the petitioners' concerns related to Ohio's MSWLF permit program. All of the examples that petitioners identified were MSWLFs. Additional examples provided during the comment period included facilities other than MSWLFs (e.g., construction and demolition debris landfill). These facilities are regulated at the federal level under 40 C.F.R. Part 257, Subpart A. The U.S. EPA does not approve state programs for 40 C.F.R. Part 257, Subpart A.

In evaluating the claims set forth in the petition, U.S. EPA focused on whether Ohio EPA sufficiently monitored compliance with the revised federal criteria and conducted enforcement actions against the owners or operators of the five specific facilities identified as examples. It is important to note that U.S. EPA only has the authority to require enforcement of the provisions of state law which are comparable to the revised federal criteria. It is the prerogative of the state to apply those components of state law that are more stringent than the federal criteria. Enforceable standards that are technically comparable to U.S. EPA's revised criteria for MSWLFs are currently contained in Ohio law (Ohio Revised Code 3734 and 3745-27). Many of the provisions in these state regulations are significantly more stringent than the federal MSWLF criteria. Ohio EPA retains the authority to issue permits for new and existing MSWLFs. In addition, Ohio EPA provides public notice, holds public hearings during permit issuance and provides public notice of enforcement actions through press releases.

U.S. EPA investigated the claims set forth in the petition by visiting the Ohio EPA's Southwest District and Headquarters offices to review facility files and conduct interviews with staff involved with the five sites specified. In addition, U.S. EPA contacted enforcement and permitting officials from the Hamilton County Department of Environmental Services (DOES) and the Regional Air Pollution Control Authority (RAPCA). The concerns relating to 42 U.S.C. § 6943(a) and 40 C.F.R. §§ 258.23 (gas monitoring), 258.40 (design requirements), 258.51 (groundwater monitoring) and 258.53(a) (groundwater sampling and analysis) were evaluated by U.S. EPA staff in the Waste, Pesticides and Toxics Division according to the "Expanded Protocol for Responding to Subtitle D - Related Issues." The affidavits received from the petitioners in July 2000 related to the Subtitle D program were also reviewed by U.S. EPA staff in the Waste, Pesticides and Toxics Division. The concerns relating to 40 C.F.R. § 258.27(a) were reviewed in coordination with U.S. EPA's Water Division, and those relating to 40 C.F.R. § 258.24 were reviewed in coordination with U.S. EPA's Air and Radiation Division. Finally, a

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review of enforcement activities and overall program resources related to MSWLFs was conducted by U.S. EPA's Office of Regional Counsel.

Based on the criteria set forth in 40 C.F.R. § 239.13 and U.S. EPA's evaluation of claims set forth in the petition, U.S. EPA made a preliminary determination in the Draft Report that there is not substantive information sufficient to indicate that the current Ohio MSWLF permit program does not meet the minimum federal requirements for an adequate program under Section 4005(c)(1)(C) of RCRA, 42 U.S.C. § 6945(c)(1)(C). All requirements in the Ohio Administrative Code and Ohio's MSWLF permitting and enforcement program meet or exceed the minimum federal requirements. Since U.S. EPA determined that Ohio EPA is implementing the program appropriately based on the preliminary review, the Draft Report did not recommend initiating the process to withdraw the determination of adequacy pursuant to 40 C.F.R. Part 239.

V. SUMMARY OF COMMENTS ON DRAFT REPORT

A. SUBTITLE C

The comments, which are set forth in more detail in the Responsiveness Summary, challenged the adequacy of the review, and criticized Ohio EPA control over regulated activities, inspection and monitoring, exercise of enforcement authorities, provision for public participation, imposition of corrective action, use of the VAP, and permit content. U.S. EPA has addressed these comments in the Responsiveness Summary.

U.S. EPA did not find evidence in the comments relating to the period of review that would change the preliminary findings set forth in the Draft Report.

B. SUBTITLE D

U.S. EPA received extensive comments on the solid waste portion of the Draft Report both at the public meeting and during the public comment period. In addition to the petitioners, four individuals provided written and oral comments on the five facilities mentioned in the original petition. Another seventeen individuals commented on additional facilities not mentioned in the original petition. The petitioners provided support for these commenters by providing an overview of the issues they raised in their comments on the Draft Report.

The comments received echoed many of the original concerns raised in the original petition that Ohio EPA fails to ensure that waste is disposed of in an environmentally sound manner and adequately control air emissions, surface water discharges and groundwater contamination. Concerns were raised about many aspects of the MSWLF permit-to-install (PTI) application, review and issuance process and time frame. Many cited concerns regarding Ohio EPA's ability to verify facility representations, identify unpermitted activities, and conduct appropriate

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enforcement actions. Persistent nuisance issues such as noise, odor, dust, litter, truck traffic and property values were raised about many facilities along with allegations of Ohio EPA unresponsiveness to such complaints by residents. Several comments focused on exemptions provided by Ohio EPA relating to unit designations, location restrictions and liner requirements. Many comments included concerns and allegations of insufficient and inadequate characterizations of underlying aquifers and subsurface geology beneath and adjacent to facilities.

The above issues were raised about construction and demolition landfills, recycling facilities and transfer stations — i.e., facilities not regulated under 40 C.F.R. Part 258 — in addition to MSWLFs. Finally, concerns were raised about Ohio EPA's ability to require that fly ash from utilities is properly tested and handled properly. A more detailed explanation of the specific comments and responses is in the Responsiveness Summary.

VI. FINAL REPORT FINDINGS

A. SUBTITLE C

U.S. EPA conducts annual audits of Ohio EPA's files and often accompanies Ohio EPA on inspections. Overall, Ohio EPA has exercised control over activities required to be regulated; has acted on violations of requirements, including permit requirements; has sought and collected adequate enforcement penalties; has inspected and monitored activities subject to regulation; has secured corrective action at facilities subject to corrective action requirements; meets the public participation requirements of 40 C.F.R. Part 271; has adequate legal enforcement authorities; and meets the terms of its RCRA MOA. In general, Ohio RCRA permits were properly issued, sufficiently detailed, and consistent with the language used in federal RCRA permits.

In their comments, petitioners were particularly concerned with the impact of the VAP program. The VAP statute, which explicitly precludes participation by properties for which a voluntary action under the VAP statute is precluded by federal law, including RCRA, did not present an "inadequate legal authority" issue for RCRA subtitle C authorization during the period of review. As implemented during the period of review, the VAP program did not impact the State's authorization. The information reviewed for the period 1995 to 2000 indicated that Ohio EPA had not abandoned enforcement efforts because of the VAP, and continued to secure corrective action through permits. Ohio EPA has expressed a desire to use the VAP program to address RCRA-eligible sites where appropriate. U.S. EPA is working with Ohio to resolve issues associated with future participation of RCRA facilities in the VAP program.

The evidence reviewed did not present sufficient cause to warrant commencement of withdrawal proceedings under 40 C.F.R. § 271.22.

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In response to verbal and written comments on the Draft Report, U.S. EPA evaluated the new information and conducted additional evaluation of the allegations. U.S. EPA contacted and interviewed Ohio EPA Headquarters and District staff as well as other regulatory officials involved in oversight and enforcement at the facilities. The findings and conclusions reached in the Draft Report were reconsidered based on the new and additional information submitted by the petitioners and commenters. U.S. EPA seriously considered all allegations, comments and issues raised by petitioners and commenters and sent direct responses to commenters who raised specific issues about facilities not mentioned in the original petition.

Many issues related to provisions of State regulations that are significantly more stringent than the federal MSWLF criteria. For purposes of this review, U.S. EPA could only evaluate allegations of failure to meet the federal MSWLF criteria. Therefore, waivers or exemptions from provisions of State regulations that are more stringent than the federal “floor” cannot serve as the basis for reconsideration of program approval. U.S. EPA evaluated allegations regarding Ohio EPA failures, inadequacies and responsiveness by contacting the appropriate District or Headquarters staff to discuss their perspective on the issue. As with any large scale program involving many offices, divisions and disciplines, it is understood that there may be instances of lack of performance and timeliness. The situation is further complicated by the intricate array of environmental concerns, multi-media regulatory issues and vast spectrum of public opinions and concerns involved with regulating solid waste management facilities. U.S. EPA recognized during its evaluation that Ohio EPA staff are seeking to balance workload priorities, stay consistent on permit and enforcement matters, and respond to public inquiries. U.S. EPA determined that Ohio EPA’s performance meets or in many aspects greatly exceeds that of other state solid waste programs in Region 5. Regardless, U.S. EPA identified several areas in which Ohio EPA could make program improvements to enhance the performance of the solid waste program.

U.S. EPA made four recommendations for program improvement based on the allegations in the original petition, subsequent amendments and affidavits and comments on the Draft Report. The recommendations included: (1) increased coordination between air, water and local agencies in reviewing and issuing draft PTIs; (2) enhanced coordination and communication with local agencies responsible for inspections on permit compliance and enforcement; (3) increased involvement of the Ohio EPA’s Public Interest Center on controversial permitting or enforcement cases; and (4) clarification of roles and responsibilities in responding to odor complaints at landfills.

U.S. EPA met with Dan Harris, Scott Hester and Annette Dehavilland of the Division of Solid and Infectious Waste Management (DSIWM) on April 15, 2002, to discuss these recommendations as well as the concerns raised in the petition and public comments. DSIWM managers and staff were aware of the comments expressed in the petition and public comments

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and understood their content. DSIWM either had already implemented or was considering implementing the four recommendations for program improvement. Specifically, Ohio EPA is developing a training program for field inspectors on conducting inspections and developing stronger enforcement cases. U.S. EPA offered to assist Ohio EPA in incorporating enhanced coordination and communication issues as well as odor detection and complaint response into the training program. If a local delegated authority may not be performing sufficiently to protect human health and the environment, Ohio EPA retains concurrent authority to conduct enforcement, and efforts are underway in the Ohio legislature to set forth criteria for an approved program at the local level. The Public Interest Center continues to make extra efforts to stay in close communication with individuals and organizations concerned about a particular facility, especially in the permit review stage, and permit writers are making extra efforts to respond to citizen concerns. Finally, Ohio EPA now requires as a permit condition that the permittee obtain all other media (i.e., air, water, wetland) permits prior to issuance of the permit to install (See references elsewhere in this background document pertaining to the air and water permitting programs).

U.S. EPA is satisfied that Ohio EPA is making a concerted effort to improve its operations and responsiveness to public inquiries and concerns. Regardless, U.S. EPA continues to seek ways to add value to Ohio EPA's solid waste program.

Although commenters reiterated concerns and submitted new information, U.S. EPA continues to conclude that there is insufficient substantive information to indicate that Ohio's MSWLF program does not meet the minimum federal requirements under Section 4005(c)(1)(C) of RCRA, 42 U.S.C. § 6945(c)(1)(C). The findings in the Draft Report did not change based on the new information submitted during the public meeting and comment period.

VII. RECOMMENDATIONS

A. SUBTITLE C

Based on the findings outlined above, U.S. EPA finds no grounds upon which to initiate withdrawal proceedings for Ohio EPA's RCRA Subtitle C hazardous waste program.

B. SUBTITLE D

Based on the findings outlined above, U.S. EPA finds no grounds upon which to initiate withdrawal of the determination of MSWLF program adequacy pursuant to 40 C.F.R. Part 239.